

McNAMARA, NEY, BEATTY, SLATTERY, BORGES & AMBACHER LLP
ATTORNEYS AT LAW
1211 NEWELL AVENUE, WALNUT CREEK, CA 94596
TELEPHONE: (925) 939-5330

NOAH G. BLECHMAN (State Bar No. 197167)
noah.blechman@mcnamaralaw.com
CAMEREN N. RIPOLI (State Bar No. 318045)
cameren.ripoli@mcnamaralaw.com
McNAMARA, NEY, BEATTY, SLATTERY,
BORGES & AMBACHER LLP
3480 Buskirk Avenue, Suite 250
Pleasant Hill, CA 94523
Telephone: (925) 939-5330
Facsimile: (925) 939-0203

Attorneys for Defendants
CITY OF GILROY POLICE DEPARTMENT; ROBERT
ZUNIGA

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JOSE SOLORIO,

Plaintiffs,

vs.

CITY OF GILROY POLICE
DEPARTMENT, ROBERT ZUNIGA and
DOES 1 to 25 INCLUSIVE,

Defendants.

Case No.

**DEFENDANTS' NOTICE OF REMOVAL
OF ACTION UNDER 28 U.S.C. § 1441(B)
TO U.S. DISTRICT COURT, NORTHERN
DISTRICT OF CALIFORNIA**

(FEDERAL QUESTION)

TO THE CLERK OF THE ABOVE-ENTITLED COURT:

PLEASE TAKE NOTICE that Defendants CITY OF GILROY POLICE DEPARTMENT;
and ROBERT ZUNIGA hereby remove to this Court the state court action described below.

I. NOTICE OF REMOVAL

On September 5, 2019, an action was commenced in the Superior Court of the State of
California in and for the County of Santa Clara, entitled JOSE SOLORIO, (Plaintiff) vs. CITY OF
GILROY POLICE DEPARTMENT; and ROBERT ZUNIGA (Defendants), as Case Number
19CV354518. Attached hereto as **Exhibit A** is a copy of the Summons and Complaint served on
Defendants in this state action, on or about November 21, 2019.

Defendants now provide timely notice of removal of this action per 28 U.S.C. §§ 1446 and 1441(c).

II. GROUND FOR REMOVAL

This is a civil action of which this Court has original jurisdiction under 28 U.S.C. § 1331 (federal question), and is one which may be removed to this Court by Defendants pursuant to the provisions of 28 U.S.C. § 1441(c), in that Plaintiff's First (and lone) Cause of Action in his Complaint is a § 1983 claim that arise under the U.S. Constitution. Specifically, Plaintiff contends that Defendants violated the Fourth and Eighth Amendments of the U.S. Constitution in their interaction with Plaintiff. (Exh. A, pg. 3). Similarly, Plaintiff appears to make a § 1983 claim directly against the Defendant City of Gilroy Police Department (ie. same as City of Gilroy) per a theory of ratification per a *Monell* type claim. *Id.* As Plaintiff has alleged several federal claims pursuant to the U.S. Constitution, the District Court has original jurisdiction under 28 U.S.C. § 1331 and removal is proper.

Defendants are unaware of any other named defendants who have been served with a Summons and the Complaint other than those herein and thus no joinder to this removal is necessary. The undersigned will be representing the CITY OF GILROY POLICE DEPARTMENT and ROBERT ZUNIGA. Plaintiff is represented by counsel David R. Shane, Esq. from Shane Law and is being served herein of these filings.

Dated: December 12, 2019

MCNAMARA, NEY, BEATTY, SLATTERY,
BORGES & AMBACHER LLP

By: _____

Noah G. Blechman
Cameren N. Ripoli
Attorneys for Defendants
CITY OF GILROY POLICE DEPARTMENT;
ROBERT ZUNIGA

EXHIBIT A

RECEIVED BY
RECORDING

NOV 21 2019

SUMMONS
(CITACION JUDICIAL)NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):CITY OF GILROY POLICE DEPARTMENT, ROBERT ZUNIGA and
DOES 1 TO 25 *inc./active,*YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):

JOSE SOLORIO

E-FILED SUM-100

FOR COURT USE ONLY
9/5/2019 1:34 PMClerk of Court
Superior Court of CA,
County of Santa Clara
19CV354518
Reviewed By: J. Duong
Envelope: 3352523

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 o más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es): Santa Clara County Superior Court
191 North First Street
San Jose, California 95113

CASE NUMBER:

(Número del Caso): 19CV354518

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
David R. Shane, Esq.; Shane Law 1000 Drakes Landing Road, Suite 200, Greenbrae, California 94904DATE: 9/5/2019 1:34 PM
(Fecha)

Clerk of Court

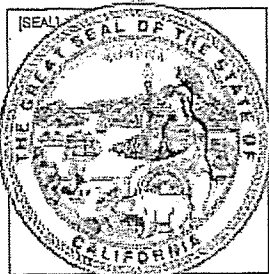
Clerk, by
(Secretario)

J. Duong

Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):

- 3.
- ☒
- on behalf of (specify):

CITY OF GILROY POLICE DEPARTMENT

- under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)

- ☐ other (specify): CCP 416-50 (PUBLIC ENTITY)
4. ☐ by personal delivery on (date):

E-FILED
9/5/2019 1:34 PM
Clerk of Court
Superior Court of CA,
County of Santa Clara
19CV354518
Reviewed By: J. Duong

1 David R. Shane, Esq. [SBN: 109890]
2 SHANE LAW
3 1000 Drakes Landing Road, Suite 200
4 Greenbrae, California 94904-3027
5 Telephone: 415/464-2020
6 Facsimile: 415/464-2024

7 Attorneys for Plaintiff
8 JOSE SOLORIO

9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SANTA CLARA
12

13 JOSE SOLORIO

14 Plaintiff,

15 vs.

16 CITY OF GILROY POLICE DEPARTMENT,
17 ROBERT ZUNIGA and DOES 1 TO 25
18 inclusive,

19 Defendants.
20

Case No. 19CV354518

COMPLAINT FOR DAMAGES

21 COMES NOW Plaintiff who alleges as follows:

22 JURISDICTION AND VENUE

23 1. This is a civil action authorized by 42 USC Section 1983 to address the
24 deprivation under color of state law, of rights secured by the Constitution of the United States.
25 This Court has jurisdiction as an action under Section 1983 can be brought in either state or
26 federal court, *Pitts v. County of Kern*, 17 Cal App 4th 340, 348 (1998).

27 2. Santa Clara County is the appropriate Court as the actions and injury occurred in
28 the County of Santa Clara.

PLAINTIFF

3. Plaintiff JOSE SOLORIO is a natural person and is and was at all times relevant a
resident of the State of California, County of Santa Clara.

1
2 **DEFENDANTS**

3 4. Defendant City of Gilroy Police Department is a public entity operating in the
4 County of Santa Clara, State of California.

5 5. Defendant ROBERT ZUNIGA, at all times relevant was a police officer,
6 (#Z6439) working in the course and scope of employment with the City
7 of Gilroy Police Department on the date and time the subject incident occurred.

8 6. Each defendant acted individually and in his official capacity. At all times
9 mentioned in this complaint each defendant acted under color of state and federal law.
10

11 **SATISFACTION OF CLAIM STATUTES**

12 7. Plaintiff was required to comply with governmental claims statutes and has
13 complied with the applicable claims statute.
14

15 **FACTS**

16 8. On the evening of Friday, March 30, 2018, plaintiff was arrested at or near the
17 intersection of East Seventh and Chestnut Streets in Gilroy, California. After exiting his
18 vehicle, plaintiff was brought to the ground by Officer Adam Moon, who held his head and torso
19 while two of the other responding officers pinned him to the ground in a face-down, spread eagle
20 fashion.

21 9. While immobilized in this manner, defendant Officer Zuniga brought his
22 canine, "Scotty", to plaintiff's prone body. At the direction and instruction of Officer Zuniga, the
23 canine attacked plaintiff while he was helpless and restrained on the ground. In spite of the fact
24 that plaintiff posed no threat to the officers at that time, Officer Zuniga did not restrain his
25 canine partner. Instead, Officer Zuniga signaled his canine partner to attack the helpless suspect.

26 10. Even after the initial attack, Officer Zuniga continued to let the canine
27 continue to gnaw and chew at plaintiff's leg for an undue period of time long after the plaintiff
28 was subdued and posed no threat to the officers. Plaintiff was repeatedly bitten on the lower left
leg, causing lacerations and nerve damage.

[42 USC Section 1983 Action Against all Defendants]

1 lacerations and bruises to plaintiff's lower left leg, and nerve damage which may prove to be
2 permanent.

3 16. The defendants, by their extreme and outrageous conduct, intentionally and
4 recklessly caused plaintiff to suffer extreme physical and emotional distress. The abuse of
5 power asserted by the defendants went beyond all possible bounds of decency and to be
6 regarded as atrocious, and utterly intolerable in a civilized community. The defendants'
7 above-described conduct violated plaintiff's right under the Fourth Amendment to the United
8 States Constitution to be free from excessive force.

9
10 17. Plaintiff currently suffers and will continue to suffer severe physical and
11 emotional distress due to the injuries sustained and the circumstances giving rise to the injuries
12 sustained.

13 WHEREFORE, plaintiff prays for judgment as follows:

- 14 1. For general and compensatory damages according to proof at trial and for
15 prejudgment interest thereon according to law;
16 2. For punitive damages;
17 3. For attorneys' fees as allowed by law; and
18 5. For costs of suit, and for such other and further relief as the Court deems just and
19 proper.
20

21 DATED: September 5, 2019

SHANE LAW

22
23 By: 

24 David R. Shane
25 Attorneys for Plaintiff
26
27
28